IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

WILLIAM & NATACHA SESKO,	)	
	)	
Appellants,	)	No. 37574-5-II
	)	
v.	)	**REPLY MEMORANDUM IN**
	)	**SUPPORT OF MOTION TO**
CITY OF BREMERTON,	)	**EXTEND TIME TO APPEAL**
	)	
Respondent.	)	
	)	

Appellants William and Natacha Sesko submit this reply in support of their motion for an extension of time within which to file their Notice of Appeal pursuant to RAP 18.8(b).

I. ARGUMENT

A. Extraordinary Circumstances Justify an Extension.

The circumstances of the late filing have been stated previously. In response, the City relies upon two cases that are readily distinguishable

from this one. To begin with, in *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 764 P.2d 653 (1988), the law firm representing Raymark as the intended appellant claimed the loss of one attorney and the heavy work-load of the firm's appellate attorney as constituting "extraordinary circumstances" justifying an extension, but a key fact in the court's decision was that a notice of appeal was not filed until the plaintiff's counsel had contacted the firm seeking payment of the judgment. *Id.*, 52 Wn. App. at 766 ("nothing of record suggests that this matter would have resurfaced in counsel's mind within a 'reasonable' time if Reichelt had not contacted counsel for payment of the judgment"). Further, there was no evidence that the firm was at all uncertain about when the notice needed to be filed. Here, a notice of appeal was filed prior to any contact by the City, and as Mr. Middleton has explained, the deadline was calendared for 30 days after receipt of the court's order by fax rather than 30 days after entry of the order.

In *Beckman v. State Dep't of Social & Health Servs.*, 102 Wn. App. 687, 11 P.3d 313 (2000), apparently there was no docketing of entry of judgment at all, and the court found the lack of any system to evidence a lack of due diligence. Here, by contrast, the event was docketed – but in error.

It should also be noted that in neither *Reichelt* nor *Beckman* was a government entity the respondent. Particularly where, as here, a case involves allegations that government has improperly taken private property, this Court should be more concerned that appeals be decided on their merits than about the finality of judgments.

The position argued here does not invite wholesale abandonment of the finality of judgments. The facts are uncontested that the deadline was in fact calendared, but 30 days following receipt of the judgment by fax from the court rather than 30 days from entry, and that the notice was filed on the 30th day following receipt of the judgment by fax. Few, if any, cases will follow that fact pattern.

B. Granting an Extension Would Prevent a Gross Miscarriage of Justice.

The City misconstrues the "miscarriage of justice" element of the rule by claiming that Judge Roof decided the issue of whether the execution statute should apply. The Seskos do not deny that Judge Roof in fact held that the execution statute did not apply. The issue is whether denying the Seskos their opportunity for appellate review of that decision would constitute a miscarriage of justice, and the fact that no Washington appellate court has addressed the application of the execution statute to nuisance abatement proceedings means that appellate review is important not

just for this case, but for nuisance abatement actions statewide.

The applicability of the execution statute, moreover, is not the only ground on which the Seskos would pursue this appeal. They are entitled to appellate review of Judge Roof's decision that the City in fact properly credited salvage value despite the removal of a salvage credit from the abatement contractor's contract and undisputed testimony from Mrs. Sesko that items were removed from her property and taken to the abatement contractor's site with no credit whatsoever being applied.

II. CONCLUSION

For these reasons, the Court should deny the motion to dismiss and grant the Seskos' motion for an extension of time.

DATED this 11th day of June, 2008.

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